

FIRST REGULAR SESSION

HOUSE BILL NO. 260

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HENKE (Sponsor), YAEGER,
WILDBERGER AND DOUGHERTY.

Read 1st time January 23, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0995L.011

AN ACT

To repeal sections 344.030, 344.050 and 344.060, RSMo, and to enact in lieu thereof six new sections relating to nursing home administrators.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 344.030, 344.050 and 344.060, RSMo, are repealed and six new
2 sections enacted in lieu thereof, to be known as sections 344.030, 344.050, 344.055, 344.056,
3 344.060 and 344.108, to read as follows:

344.030. 1. An applicant for an initial license shall file a completed application with the
2 board on a form provided by the board, accompanied by an application fee of one hundred
3 dollars payable to the director of revenue. Information provided in the application shall be given
4 under oath subject to the penalties for making a false affidavit.

5 2. No initial license shall be issued to a person as a nursing home administrator unless:

6 (1) The applicant provides the board satisfactory proof that the applicant is twenty-one
7 years of age or over, of good moral character and a high school graduate or equivalent;

8 (2) The applicant provides the board satisfactory proof that the applicant has had a
9 minimum of three years' experience in health care administration or two years of postsecondary
10 education in health care administration or has satisfactorily completed a course of instruction and
11 training prescribed by the board, which includes instruction in the needs properly to be served
12 by nursing homes, the protection of the interests of residents therein, and the elements of good
13 nursing home administration, or has presented evidence satisfactory to the board of sufficient
14 education, training, or experience in the foregoing fields to administer, supervise and manage

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is new proposed language.

15 a nursing home; and

16 (3) The applicant passes the [written examination] **examinations** administered by the
17 board. If an applicant fails to make a passing grade on [the examination] **either of the**
18 **examinations** such applicant may make application for reexamination on a form furnished by
19 the board and may be retested [at the next regularly scheduled examination]. If an applicant fails
20 [the examination] **either of the examinations** a third time, the applicant shall be required to
21 complete a course of instruction prescribed and approved by the board [before the applicant may
22 reapply for examination]. **After completion of the board-prescribed course of instruction,**
23 **the applicant may reapply for board-administered examination. No applicant shall be**
24 **licensed by the board after the applicant's third licensure examination failure unless the**
25 **applicant successfully completes the board-prescribed course of instruction and passes**
26 **board-administered examinations. With regard to any nationally certified examination**
27 **required for licensure, no examination scores from other states shall be recognized by the**
28 **board after the applicant has failed his or her third attempt at examination.** There shall be
29 a separate, nonrefundable fee for each examination. The board shall set the amount of the fee
30 for examination by rules and regulations promulgated pursuant to section 536.021, RSMo. The
31 fee shall be set at a level to produce revenue which shall not substantially exceed the cost and
32 expense of administering the examination.

33 3. The board may issue a license through reciprocity to any person who is regularly
34 licensed as a nursing home administrator in any other state, territory, or the District of Columbia,
35 if the regulations for securing such license are equivalent to those required in the state of
36 Missouri. However, no license by reciprocity shall be issued until the applicant passes a special
37 examination approved by the board, which will examine the applicant's knowledge of specific
38 provisions of Missouri statutes and regulations pertaining to nursing homes. The applicant shall
39 furnish satisfactory evidence that such applicant is of good moral character and has acted in the
40 capacity of a nursing home administrator in such state, territory, or the District of Columbia, at
41 least one year after the securing of the license. The board, in its discretion, may enter into
42 written reciprocal agreements pursuant to this section with other states which have equivalent
43 laws and regulations.

44 4. Nothing in sections 344.010 to 344.100, or the rules or regulations thereunder shall
45 be construed to require an applicant for a license as a nursing home administrator, who is
46 employed by an institution listed and certified by the Commission for Accreditation of Christian
47 Science Nursing Organizations/Facilities, Inc., to administer institutions certified by such
48 commission for the care and treatment of the sick in accordance with the creed or tenets of a
49 recognized church or religious denomination, to demonstrate proficiency in any techniques or
50 to meet any educational qualifications or standards not in accord with the remedial care and

51 treatment provided in such institutions. The applicant's license shall be endorsed to confine the
52 applicant's practice to such institutions.

53 5. The board may issue a temporary emergency license for a period not to exceed ninety
54 days to a person twenty-one years of age or over, of good moral character and a high school
55 graduate or equivalent to serve as an acting nursing home administrator, provided such person
56 is replacing a licensed nursing home administrator who has died, has been removed or has
57 vacated the nursing home administrator's position. No temporary emergency license may be
58 issued to a person who has had a nursing home administrator's license denied, suspended or
59 revoked. A temporary emergency license may be renewed for one additional ninety-day period
60 upon a showing that the person seeking the renewal of a temporary emergency license meets the
61 qualifications for licensure and has filed an application for a regular license, accompanied by the
62 application fee, and the examination [has not yet been given] **results have not been received**
63 **by the board.** No temporary emergency license may be renewed more than one time.

344.050. 1. The board may refuse to issue or renew any certificate of registration or
2 authority, permit or license required pursuant to this chapter for one or any combination of
3 causes stated in subsection 2 of this section. The board shall notify the applicant in writing of
4 the reasons for the refusal and shall advise the applicant of [his] **the applicant's** right to file a
5 complaint with the administrative hearing commission as provided by chapter 621, RSMo. **As**
6 **an alternative to refusal to issue or renew any certificate, registration or authority, permit**
7 **or license, the board may, at its discretion, issue a license which is subject to probation for**
8 **any one or any combination of causes stated in subsection 2 of this section. The board's**
9 **order of probation shall contain a statement of the discipline imposed, the basis therefore,**
10 **the date such action shall become effective and a statement that the applicant has thirty**
11 **days to request in writing a hearing before the administrative hearing commission. If the**
12 **board issues a probationary license to an applicant for licensure, the applicant may file a**
13 **written petition with the administrative hearing commission within thirty days of the**
14 **effective date of the probationary license seeking review of whether cause exists to**
15 **discipline the license pursuant to subsection 2 of this section. If no written request for a**
16 **hearing is received by the administrative hearing commission within the thirty-day period,**
17 **the right to seek review of the board's decision shall be considered waived.**

18 2. The board may cause a complaint to be filed with the administrative hearing
19 commission as provided by chapter 621, RSMo, against any holder of any certificate of
20 registration or authority, permit or license required by this chapter or any person who has failed
21 to renew or has surrendered his certificate of registration or authority, permit or license for any
22 one or any combination of the following causes:

23 (1) Use or unlawful possession of any controlled substance, as defined in chapter 195,

24 RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the
25 work of any profession licensed or regulated by this chapter;

26 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
27 or nolo contendere, pursuant to criminal prosecution under the laws of any state or of the United
28 States, for any offense reasonably related to the qualifications, functions or duties of any
29 profession licensed or regulated under this chapter, for any offense an essential element of which
30 is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether
31 or not sentence is imposed;

32 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
33 registration or authority, permit or license issued pursuant to this chapter or in obtaining
34 permission to take any examination given or required pursuant to this chapter;

35 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
36 fraud, deception or misrepresentation;

37 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
38 in the performance of the functions or duties of any profession licensed or regulated by this
39 chapter;

40 (6) Violation of, or assisting or enabling any person to violate, any provision of this
41 chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

42 (7) **Violation of, or assisting or enabling any person to violate, any provision of**
43 **chapter 198, RSMo, or any lawful rule or regulation promulgated thereunder;**

44 (8) Impersonation of any person holding a certificate of registration or authority, permit
45 or license, or allowing any person to use [his] **such person's** certificate of registration or
46 authority, permit, license or diploma from any school;

47 [(8)] (9) Disciplinary action against the holder of a license or other right to practice any
48 profession regulated by this chapter granted by another state, territory, federal agency or country
49 upon grounds for which revocation or suspension is authorized in this state;

50 [(9)] (10) A person is finally adjudged incapacitated or disabled by a court of competent
51 jurisdiction;

52 [(10)] (11) Assisting or enabling any person to practice or offer to practice any
53 profession licensed or regulated by this chapter who is not registered and currently eligible to
54 practice [under] **pursuant to** this chapter;

55 [(11)] (12) Issuance of a certificate of registration or authority, permit or license based
56 upon a material mistake of fact;

57 [(12)] (13) Violation of the drug laws or rules and regulations of this state, any other
58 state or the federal government;

59 [(13)] (14) Knowingly failing to report abuse or neglect of a resident in a long-term care

60 facility, as required by section 198.070, RSMo, of which he **or she** has actual knowledge that it
61 is abuse or neglect;

62 **(15) Violation of any professional trust or confidence;**

63 **(16) Having served as the administrator, owner or operator of a facility licensed**
64 **pursuant to chapter 198, RSMo, and during such time the facility has had its license**
65 **revoked pursuant to section 198.036, RSMo, has entered into a probation agreement**
66 **pursuant to subsection 5 of section 198.026, RSMo, or has surrendered its license while**
67 **under investigation.**

68 3. The administrative hearing commission shall have no authority to require issuance of
69 a license, pending a final determination by the commission, in any case in which an applicant is
70 seeking initial licensure.

71 4. No license may be suspended or revoked and no application for renewal of a license
72 may be denied [under] **pursuant to** this section until the licensee has been afforded an
73 opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

74 5. Upon a finding by the administrative hearing commission that the grounds, provided
75 in subsection 2 of this section, for disciplinary action are met, the board may, singly or in
76 combination, [place upon probation,] **censure or place the person named in the complaint on**
77 **probation on such terms as the board deems appropriate, or may suspend or revoke [a] the**
78 **certificate [of registration or authority], permit or license.**

344.055. 1. The board of nursing home administrators may hold a disciplinary
2 **hearing to singly or in combination censure or place the person named in the complaint on**
3 **probation on such terms and conditions as the board deems appropriate, or may suspend**
4 **or revoke a certificate of registration or authority, permit, or license issued pursuant to**
5 **sections 344.010 to 344.100 following a review of the record of the proceedings by the board**
6 **and upon a formal motion of the board:**

7 **(1) When the final trial proceedings are concluded where a person has been**
8 **adjudicated and found guilty, or has entered a plea of guilty or nolo contendere whether**
9 **or not sentence is imposed in a felony criminal prosecution pursuant to the laws of this**
10 **state, the laws of any other state, territory, or district of the United States, or the United**
11 **States:**

12 **(a) For any felony offense reasonably related to the qualifications, functions, or**
13 **duties of the person licensed pursuant to sections 344.010 to 344.100; or**

14 **(b) For any felony offense for which an essential element is fraud, dishonesty, or**
15 **an act of violence; or**

16 **(c) For any felony offense involving moral turpitude;**

17 **(2) Upon the final and unconditional revocation or surrender of the person's license**

18 to practice the same profession in another state, territory, or district of the United States
19 upon grounds for which revocation is authorized in this state.

20 2. The certificate, permit, or license of such person shall be automatically reinstated
21 if the conviction, judgment, or revocation is set aside upon final appeal in any court of
22 competent jurisdiction.

23 3. Any person who has been revoked or denied a certificate, permit, license, or
24 other authority to practice a profession in another state, if such profession in this state is
25 regulated pursuant to sections 344.010 to 344.100, may automatically be denied a
26 certificate, permit, or license to practice such a profession in this state.

344.056. 1. Notwithstanding any other provisions of law to the contrary and to
2 encourage settlement of disputes between the board of nursing home administrators and
3 its licensees, the board shall:

4 (1) Provide the licensee with a written description of the specific conduct for which
5 discipline is sought and a citation to the law and rules allegedly violated together with
6 copies of any documents which are the basis for which discipline is sought or file a
7 contested case against the licensee as provided in sections 621.015 to 621.205, RSMo, prior
8 to offering the licensee a settlement proposal and provide the licensee with an opportunity
9 to respond to the allegations;

10 (2) If no contested case has been filed against the licensee, allow the licensee at least
11 sixty days from the date of mailing during which to consider the board's initial settlement
12 offer and discuss the terms of such settlement offer with the board;

13 (3) If no contested case has been filed against the licensee, advise the licensee that
14 the licensee may, either at the time the settlement agreement is signed by all parties or
15 within fifteen days thereafter, submit the agreement to the administrative hearing
16 commission for determination that the facts agreed to by the parties to the settlement
17 constitute grounds for denying or disciplining the license of the licensee; and

18 (4) In any contract pursuant to this section by the board or its counsel with a
19 licensee who is not represented by counsel, advise the licensee that the licensee has the right
20 to consult an attorney at the licensee's own expense.

21 2. If the licensee desires review by the administrative hearing commission pursuant
22 to subdivision (3) of subsection 1 of this section at any time prior to the settlement
23 becoming final, the licensee may rescind and withdraw from the settlement and any
24 admissions of fact or law in the agreement shall be deemed withdrawn and not admissible
25 for any purposes under the law against the licensee. Any settlement submitted to the
26 administrative hearing commission shall not be effective and final unless and until findings
27 of fact and conclusions of law are entered by the administrative hearing commission that

28 **the facts agreed to by the parties to the settlement agreement constitute grounds for**
29 **denying or disciplining the license of the licensee.**

344.060. 1. The director of the department of health and senior services shall appoint
2 ten suitable persons who together with the director of the division of aging of the department of
3 health and senior services shall constitute the "Missouri Board of Nursing Home Administrators"
4 which is hereby created within the department of health and senior services and which shall have
5 the functions, powers and duties prescribed by sections 344.010 to 344.100.

6 2. In addition to the director of the division of aging or [his] **the director's** designee the
7 membership of the board shall consist of one licensed physician, two licensed health
8 professionals, one person from the field of health care education, four persons who have been
9 in general administrative charge of a licensed nursing home for a period of at least five years
10 immediately preceding their appointment, and two public members. **In addition to these**
11 **qualifications, the physician, the two licensed health care professionals and the health care**
12 **educator shall be citizens of the United States and tax-paying residents of the state of**
13 **Missouri for one year preceding their appointments. The four appointees who have been**
14 **in general administrative charge of a licensed nursing home shall be citizens of the United**
15 **States and either residents of the state of Missouri for one year preceding their**
16 **appointments or persons who have been licensed by the board and whose five years of**
17 **employment in a licensed nursing home immediately preceding their appointment have**
18 **occurred in the state of Missouri. The public members shall be citizens of the United**
19 **States, residents of the state of Missouri for one year preceding their appointment and**
20 **registered voters.** The public members shall be persons who are not, or never were, licensed
21 nursing home administrators or the spouse of such persons, or persons who do not have or never
22 have had a material, financial interest in either the providing of licensed nursing home services
23 or in an activity or organization directly related to licensed nursing home administration. Neither
24 the one licensed physician, the two licensed health professionals, nor the person from the health
25 care education field shall have any financial interest in a licensed nursing home.

26 3. The members of the board shall be appointed for three-year terms or until their
27 successors are appointed and qualified provided that no more than four members' terms shall
28 expire in the same year. All members appointed prior to September 28, 1979, shall serve the
29 term for which they were appointed. The governor shall fill any vacancies on the board as
30 necessary. Appointment to fill an unexpired term shall not be considered an appointment for a
31 full term. Board membership, continued until successors are appointed and qualified, shall not
32 constitute an extension of the three-year term and the successors shall serve only the remainder
33 of the term.

34 4. Every member shall receive a certificate of appointment; and every appointee, before

35 entering upon his or her duties, shall take the oath of office required by article VII, section 11,
36 of the Constitution of Missouri.

37 5. Any member of the board may be removed by the director of the department of health
38 and senior services for misconduct, incompetency or neglect to duty after first being given an
39 opportunity to be heard in his or her own behalf.

344.108. 1. Any nursing home administrator possessing a current license to
2 practice as a nursing home administrator in this state may place such license on inactive
3 status by filing a written signed request for inactive status with the board, accompanied
4 by evidence satisfactory to the board of completion of five clock hours of continuing
5 education in the area of patient care and a fee of fifty dollars made payable to the division
6 of aging. This request may also be accomplished by signing the request for inactive status
7 which appears on the nursing home administrator's application for license renewal and
8 returning such application to the board prior to June thirtieth of the year of renewal of the
9 administrator's active license, accompanied by evidence satisfactory to the board of the
10 completion of five clock hours of continuing education in the area of patient care and a fee
11 of fifty dollars made payable to the division of aging. Information provided in the request
12 for inactive status shall be given under oath subject to the penalties of making a false
13 affidavit.

14 2. An individual who requests that his or her license be placed on inactive status
15 shall return all indicia of licensure to the board.

16 3. An inactive license shall expire on June thirtieth of the year of issuance and each
17 year thereafter. Licensees seeking to renew shall, during the month of May each year, file
18 an application for renewal on forms furnished by the board which include evidence
19 satisfactory to the board of completion of five hours of continuing education in the area of
20 patient care and shall be accompanied by a renewal fee of twenty-five dollars payable to
21 the division of aging.

22 4. A license may be carried in inactive status for up to five years from the date of
23 issuance. If the licensee does not reactivate the license during the five-year period, the
24 license shall expire on the last day of the five-year period.

25 5. A holder of an inactive license may reactivate the license by submitting a written
26 request to the board, accompanied by evidence satisfactory to the board of the completion
27 of twenty clock hours of continuing education and a fee of fifty dollars made payable to the
28 division of aging. The twenty clock hours of continuing education shall be earned no
29 earlier than six months prior to the request for reactivation and no later than six months
30 after the inactive license has been reactivated. If the holder of an inactive license requests
31 reactivation prior to completing the twenty clock hours of continuing education, the board

32 shall issue a six-month interim license to the licensee. The interim license shall expire six
33 months from the date of issuance or at such earlier time as the licensee earns the twenty
34 clock hours of continuing education and submits evidence satisfactory to the board of
35 completion of the required hours. If a holder of an inactive license requests reactivation
36 after January first of the current renewal cycle, the twenty clock hours of continuing
37 education required for license renewal may be prorated by the board.

38 6. A request for reactivation of an inactive license shall show, under oath or
39 affirmation of the nursing home administrator, a statement that the nursing home
40 administrator has not practiced during the inactive period and is not presently practicing
41 in this state.

42 7. No person shall practice as a nursing home administrator or hold himself or
43 herself out as a nursing home administrator in this state while his or her license is inactive.

44 8. Inactive licensees shall remain subject to discipline for violations of this chapter
45 and the rules promulgated thereunder.